

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc.	Docket Nos. ER96-2495-015, ER97-4143-003, ER97-1238-010, ER98-2075-009, and ER98-542-005 (Not consolidated)
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Entergy Services, Inc.	Docket No. ER91-569-009
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Southern Company Energy Marketing L.P.	Docket No. ER97-4166-008
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ORDER ON TRIENNIAL MARKET POWER UPDATES  
AND ANNOUNCING NEW, INTERIM GENERATION MARKET POWER SCREEN  
AND MITIGATION POLICY

(Issued November 20, 2001)

In this order we act on the triennial market power updates submitted by AEP Power Marketing, Inc. (AEP Marketing), AEP Service Corporation (AEP Service), on behalf of the American Electric Power operating companies, CSW Power Marketing, Inc. (CSW Marketing), CSW Energy Services, Inc. (CSW ESI), and Central and South West Services, Inc. (CSW Services) (collectively AEP); Entergy Services, Inc., on behalf of the Entergy Operating Companies and their affiliates (collectively Entergy); and Southern Company Energy Marketing L.P. (SCEM).<sup>1</sup>

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<sup>1</sup>In order for an applicant to obtain or retain market-based rate authorization the Commission considers, among other things, whether the applicant and its affiliates possess generation market power. At the time of filing, SCEM (now Mirant Americas Energy Marketing, LP (Mirant), was affiliated with the Southern Company operating companies (Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company) (collectively Southern Companies). Subsequently, Mirant spun-off from Southern Companies and is no longer affiliated with a traditional public utility. As such, we consider Mirant and  
(continued...)

In this order the Commission also announces a new generation market power screen that we apply to market-based rate applications on an interim basis pending a generic review of new analytical methods for analyzing market power.<sup>2</sup> We conclude that the Supply Margin Assessment (SMA) screen, which is discussed in detail below, will provide a better method than the one we currently use for assessing whether an applicant has market power and will better protect customers while we are undertaking our broad generic inquiry.

## I. Background

The Commission requires an entity with market-based rate authority to file an updated market analysis within three years of the date of issuance of the Commission's order granting market-based rate authority, and every three years thereafter.<sup>3</sup> This order addresses the triennial market power updates submitted by AEP, Entergy, and SCEN.

### A. AEP (Docket Nos. ER96-2495-015, ER97-4143-003, ER97-1238-010, ER98-2075-009, and ER98-542-005)

This proceeding involves the market power update submitted by AEP Marketing (to reflect the merger with CSW).<sup>4</sup> AEP requests that the Commission treat this updated

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<sup>1</sup>(...continued)

Southern Companies separately in this order.

<sup>2</sup>As noted in an order in Docket No. EL01-118-000 to be issued contemporaneously with this order, the Commission intends to hold a series of outreach meetings with industry experts, which the Commission expects will inform a generic rulemaking proceeding on potential new analytical methods for assessing markets and market power.

<sup>3</sup>Alternatively, entities that receive market-based rate authority are required to notify the Commission on an ongoing basis of any change in status that would reflect a departure from the characteristics the Commission relied upon in approving market-based pricing. In addition, the Commission reserves the right to require an updated market analysis at any time. See, e.g., AEP Power Marketing, Inc., 76 FERC ¶ 61,307 at 62,516 & n.12 (1996); Southern Company Services, Inc., 75 FERC ¶ 61,130 at 61,441 n.14; clarified, 75 FERC ¶ 61,353 (1996).

<sup>4</sup>The AEP Companies received market-based rate authority in the following orders: AEP Power Marketing, Inc., 76 FERC ¶ 61,307 (1996); AEP Service

(continued...)

market power analysis as also meeting the triennial update requirements for AEP Service (on behalf of the AEP operating companies) in Docket No. ER97-4143, CSW Marketing in Docket No. ER97-1238, CSW ESI in Docket No. ER98-2075, and CSW Services in Docket No. ER98-542. AEP asks the Commission, on a going forward basis, to synchronize the dates on which the triennial updates for the AEP Companies are due.<sup>5</sup>

Timely motions to intervene were filed by Arkansas Electric Cooperative Corporation, Enron Power Marketing, Inc. (Enron), the Brownsville, Texas Public Utilities Board (Public Utilities Board), and the Oklahoma Municipal Power Authority (Oklahoma Authority). The Oklahoma Authority and Enron protest the filing.<sup>6</sup> Public Utilities Board and the Oklahoma Authority argue that the hub-and-spoke analysis on which the market update is based does not take regional transmission constraints and generation-load imbalances into account. Enron argues that the transmission-owning affiliate of AEP, AEP Transmission, exercises transmission market power.

Southwest Power Pool, Inc. (SPP) filed a motion for leave to intervene out of time and answer to Enron's protest. In addition, Enron filed a motion for summary disposition asking the Commission to summarily reject AEP's market power analysis and request for continuation of market-based rate authorization. AEP and SPP filed answers to Enron's motion for summary disposition.

B. Entergy (Docket No. ER91-569-009)

In this proceeding, Entergy Services, Inc. submitted an updated market power analysis on behalf of the Entergy Operating Companies and their affiliates (collectively Entergy).<sup>7</sup> Timely motions to intervene were filed by Aquila Energy Marketing Corp.

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<sup>4</sup>(...continued)

Corporation, 81 FERC ¶ 61,129 (1997); CSW Power Marketing, Inc., 79 FERC ¶ 61,308 (1997), reh'g denied, 85 FERC ¶ 61,444 (1998); CSW Energy Services, Inc. and Central and South West Services, Inc., 83 FERC ¶ 61,111 (1997), reh'g denied, 85 FERC ¶ 61,444 (1998); Central and South West Services, Inc., 82 FERC ¶ 61,011 (1998).

<sup>5</sup>We will grant AEP's request in this regard.

<sup>6</sup>Enron filed a motion for leave to protest out of time and protest. AEP opposes Enron's request to file a late protest.

<sup>7</sup>The operating company subsidiaries are Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, (continued...)

(Aquila) and jointly by the Municipal Energy Agency of Mississippi and the Lafayette Utilities System (MEAM and Lafayette). MEAM and Lafayette protest the filing. Aquila supports that protest. The Arkansas Public Service Commission filed a timely notice of intervention; the Mississippi Public Service Commission filed its notice of intervention out of time. Arkansas Electric Cooperative Corporation, Conoco Global Power and Conoco Power Marketing Inc., Enron Power Marketing, Inc. (Enron), Arkansas Cities, and the Louisiana Public Service Commission filed motions for leave to intervene out of time. Dynegy Power Corp. (Dynegy) and the Clarksdale Public Utilities Commission filed motions for leave to intervene out of time and protests.

Following the issuance of an order on complaint finding that Entergy violated a provision of the pro forma tariff, the Commission gave interested persons an opportunity to file comments in Docket No. ER91-569-009 on whether Entergy lacks market power.<sup>8</sup> Arkansas Cities filed timely comments.<sup>9</sup> Enron and Aquila filed comments out of time. Enron subsequently filed supplemental comments and a request for evidentiary hearing.

Entergy filed answers to the protests and the comments of Aquila, Dynegy, and Enron. Aquila filed a request for leave to respond to Entergy's answer. Entergy filed a number of other supplemental pleadings.

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<sup>7</sup>(...continued)

Inc. Other Entergy subsidiaries with market-based rate authority on whose behalf the update was filed include Entergy Power Marketing Corp., Entergy Power Inc., and Entergy Nuclear Generation Company.

<sup>8</sup>See Aquila Power Corporation v. Entergy Services, Inc., et al., 90 FERC ¶ 61,260 (March 16, 2000 order); order denying reh'g and granting certification, 92 FERC ¶ 61,064 (2000). The March 16, 2000 order, which, inter alia, determined that the more appropriate forum for evaluating whether Entergy still lacks market power is in Docket No. ER91-569-009, set an April 17, 2000 deadline for Aquila and other interested persons to raise or elaborate on the market power issue as part of the Commission's consideration of Entergy's updated market study in Docket No. ER91-569-009.

<sup>9</sup>Arkansas Cities are comprised of the following: City of Benton, Arkansas; City of Bentonville, Arkansas; Clarksville Light & Water Company; Conway Corporation; Hope Water and Light Commission; City Water & Light Plant of Jonesboro, Arkansas; City of North Little Rock, Arkansas; City of Osceola, Arkansas; Paragould Light & Water Commission; City of Piggott, Arkansas; City of Prescott, Arkansas; City of Siloam Springs, Arkansas; and West Memphis Utilities Commission.

Intervenors protesting the filing request that the Commission summarily reject the filing. Intervenors argue that the hub-and-spoke analysis cannot be relied upon as an indicator of market power because it does not take into account transmission capability. In addition, intervenors argue that Entergy has projected new competitive power sources, and the use of projections has inappropriately lowered Entergy's market share.

Intervenors also protest transmission-related issues. Dynegy argues that Entergy is erecting barriers to entry by delaying requests for interconnection. Other intervenors, including MEAM and Lafayette and Enron, argue that Entergy is exercising market power by posting inaccurate Available Transfer Capability (ATC) on its OASIS, making the use of the transmission system, for all practical purposes, available only to the transmission provider and its affiliates.

C. Southern Companies (Docket No. ER97-4166-008)

In this proceeding, SCEM (now Mirant) submitted an updated market power analysis involving the Southern Companies. Enron filed a timely motion to intervene and protest of the updated market power analysis submitted in this proceeding. Enron protests the filing on the basis that the operating utility affiliates of SCEM, the Southern Companies, have failed to mitigate their transmission market power. Enron also complains that Southern Companies does not post on its OASIS audit information needed to verify that comparable transmission service is being offered (e.g., time-stamped user logins and disconnects, all user download requests, and all service requests).

On April 25, 2001, Mirant (formerly SCEM) filed a notice of its spin-off from Southern Companies. Mirant argues that it is no longer affiliated with any entity that owns significant transmission and is fully independent of the transmission owning entities that were the subject of Enron's protest. It asks the Commission to take notice of this change of status in considering Mirant's market power update.

Although SCEM (now Mirant) may no longer be affiliated with the Southern Companies, the SCEM triennial update as originally submitted was relevant to and implicated the previously granted market-based rate authorizations of the Southern Companies, not just that of SCEM. On this basis, and consistent with the Commission's right to require an entity with market-based rate authority to file an updated analysis at any time, we consider Mirant and Southern Companies separately in this order.<sup>10</sup>

II. Discussion

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<sup>10</sup>See note 1.

A. Procedural Matters

The timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to the respective proceedings. In addition, we will grant the untimely motions to intervene and untimely notices of intervention given the early stage of the proceedings, the movants' interests in the proceedings, and the absence of any undue prejudice or delay.<sup>11</sup>

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2001), we do not find good cause to accept the answers to protests or answers to answers filed in the respective proceedings and therefore reject them. Further, we will dismiss Enron's motion for summary disposition in Docket Nos. ER96-2495-015, ER97-4143-003, ER97-1238-010, ER98-2075-009, and ER98-542-005 as moot given our resolution of the proceeding in this order.

B. Market-Based Rate Standard

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.

Since beginning to grant market-based rates to public utilities in the 1980s, the Commission primarily focused on the applicant and employed the "hub-and-spoke" analysis to determine whether an individual entity and its affiliates have the ability to exercise generation market power. In a "hub and spoke" analysis the applicant computes its market share of installed and uncommitted generation in a particular market. While the Commission did not employ a bright line test, it looked to a benchmark for generation

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<sup>11</sup>We will also grant Enron's motion to file a late protest in Docket Nos. ER96-2495-015, ER97-4143-003, ER97-1238-010, ER98-2075-009, and ER98-542-005, given the early stage of the proceedings and the absence of any undue prejudice or delay. We also will allow the late-filed comments of Enron and Aquila in Docket No. ER91-569-009 (in response to the March 16, 2000 order), given the early stage of the proceeding and the absence of any undue prejudice or delay. However, because the March 16, 2000 order did not provide the opportunity for reply comments, we will reject Entergy's answers to the comments as well as Enron's supplemental comments and request for evidentiary hearing.

market power of whether a seller had a market share of 20 percent or less in each of the markets.

As stated above, the assessment of market power also considers whether the applicant has transmission market power, whether there are barriers to entry, and whether there is reciprocal dealing. The typical test for demonstrating the requisite absence or mitigation of transmission market power is whether the applicant and its affiliates have an approved open access transmission tariff. With regard to barriers to entry, the Commission relies on an applicant's representation and public policing.

The Commission has concluded that, because of significant structural changes and corporate realignments that have occurred and continue to occur in the electric industry, our hub-and-spoke analysis no longer adequately protects customers against generation market power in all circumstances. The hub-and-spoke analysis worked reasonably well for almost a decade when the markets were essentially vertical monopolies trading on the margin and retail loads were only partially exposed to the market. Since that time markets have changed and expanded. While we intend to undertake a generic review of markets and market power in general, we conclude that in the interim a more appropriate test should be applied to ensure that customers are protected against market power in generation. Accordingly, we have developed a Supply Margin Assessment (SMA) screen to be used pending completion of a generic rulemaking proceeding. Set forth below is a description of the SMA screen.

### C. The SMA Screen

As a method for assessing whether an applicant has generation market power, the SMA builds on and improves the existing hub-and-spoke analysis in two ways. First, in determining the geographic market, the SMA considers transmission constraints. Thus, the SMA can more accurately determine what supply can reach buyers to compete with the applicant.

Second, in determining the size that triggers generation market power concerns, the SMA establishes a threshold based on whether an applicant is pivotal in the market, i.e., whether at least some of the applicant's capacity must be used to meet the market's peak demand. When an applicant is pivotal, it is in a position to demand a high price above competitive levels and be assured of selling at least some of its capacity. An applicant will be pivotal if its capacity exceeds the market's surplus of capacity above peak demand -- that is, the market's supply margin. Thus, an applicant will fail the SMA screen if the amount of its capacity exceeds the market's supply margin. By contrast, under the hub-and-spoke method, an applicant would pass the screen if its market share were less than 20 percent, even if its capacity were pivotal. The SMA's supply margin

threshold is a better screen for market power because, unlike the 20 percent market share screen, it is sensitive to the relative scarcity of electricity supply available from suppliers other than the applicant in the applicable market. Effectively, the supply margin threshold identifies whether the applicant is a must-run supplier needed to meet peak load in the control area. Thus, the supply margin is sensitive to the potential for the applicant to successfully withhold supplies in the market in order to raise prices.

1. How to Apply the SMA Screen

a. Non ISO/RTO Markets

In applying the SMA, we will first consider the control area market where the applicant is located. Next we will consider the markets outside the applicant's control area market. An applicant will pass the screen if it or its affiliates own or control through contract an amount of generation located in a control area which is less than the supply margin (generation in excess of load) in the control area. The margin will include the amount of generation that can be imported into the control area limited by the total transfer capability (TTC) of the transmission system (*i.e.*, the lesser of uncommitted capacity or TTC).<sup>12</sup> Sellers and their affiliates would continue to be allowed to sell into any control area where they pass the screen.<sup>13</sup>

b. ISO/RTO Markets

All sales, including bilateral sales, into an ISO or RTO with Commission-approved market monitoring and mitigation will be exempt from the SMA and, instead, will be governed by the specific thresholds and mitigation provisions approved for the particular markets.

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<sup>12</sup>The total amount of TTC is used herein as only a point of reference to establish the maximum amount of uncommitted supply. We have used this upper limit even though this amount of generation could not be simultaneously imported into an applicant's control area. Intervenor will be allowed to present arguments on a case-by-case basis that another factor limiting import capability is appropriate, if warranted by the facts.

<sup>13</sup>We continue to reserve the right to direct entities authorized to sell power at market-based rates to file an updated analysis at any time. In addition, parties may file a complaint under FPA section 206 that market conditions have changed such that sellers no longer pass the SMA screen.



D. Application of SMA to Instant Proceedings

As set forth below, we will apply the SMA screen in the instant proceedings. We believe that the use of the SMA resolves the protests in the instant proceedings that the hub-and-spoke analysis cannot be relied upon as an indicator of generation market power because it does not take into account transmission constraints. As noted above, the SMA screen considers transmission constraints. Intervenor also argue that applicants are exercising transmission market power by posting inaccurate and unreliable ATC on their OASIS, making the use of the transmission systems, for all practical purposes, available only to the transmission provider and its affiliates. We address these arguments below.

1. AEP (Docket No. ER96-2495-015, et al.)

We have compared AEP East and AEP West's generation capacity to the supply margin (difference between available supply and peak demand) in each of its control area markets.<sup>14</sup> Available supply includes all uncommitted generation that can reach the market once transmission constraints are factored in.

In analyzing AEP's control area market, we updated AEP's study to: (1) include new capacity additions in the market area;<sup>15</sup> and (2) incorporate peak load data from the Applicant's 2000 Form No. 1. Uncommitted capacity from outside the AEP control area market was adjusted so that the values were no more than TTC amounts posted on AEP's OASIS. Based on this information, the supply margin in both AEP East and AEP West is approximately 15,000 MW. AEP's installed capacity is about one and one-half times and two times the supply margin in AEP East and AEP West, respectively.

Based on these results, AEP has the ability to exercise market power within its control area market because its generation is needed to meet the market's peak demand.

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<sup>14</sup>AEP East comprises the territory in which AEP affiliates Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power Company operate. AEP West comprises the territory in which AEP affiliates Public Service of Oklahoma, Southwestern Electric Power Company, Central Power and Light Company, and West Texas Utilities Company operate.

<sup>15</sup>Using Resource Data International, Inc (RDI) data, we updated the available supply in AEP East's market by adding over 700 MW of installed capacity available for sale in the AEP East control area market. RDI reported no new supply in AEP West's control area market.

We will therefore impose mitigation (discussed below) for AEP and its affiliates in this market. A similar analysis of the markets outside of AEP's control area market indicates that AEP passes the SMA screen. As a result, the mitigation discussed below does not apply to the markets outside of AEP's control area market.

\_\_\_\_\_2. Entergy (Docket No. ER91-569-009)

We have compared Entergy's generation capacity to the supply margin (i.e., the difference between available supply and peak demand) in its control area market. Available supply includes all uncommitted generation that can reach the market once transmission constraints are taken into account.

In analyzing the Entergy control area market, we updated Entergy's study to: (1) include new capacity additions in the market area;<sup>16</sup> and (2) incorporate peak load data from the Applicant's 2000 Form No. 1. Uncommitted capacity from outside the Entergy control area market was not adjusted (other than to confirm that the values were less than TTC amounts posted on Entergy's OASIS). Based on this information, the supply margin is approximately 5,000 MW. Entergy's installed capacity is over four times the supply margin.

Based on these results, Entergy has the ability to exercise market power within its control area market because its generation is needed to meet the market's peak demand. We will therefore impose mitigation (discussed below) for Entergy and its affiliates in this market. A similar analysis of the markets outside of Entergy's control area indicates that Entergy passes the SMA screen. As a result, the mitigation discussed below does not apply to the markets outside of Entergy's control area market.

Intervenors' concerns that Entergy used projected supply are moot because the above analysis did not include the projected amounts of new generation on which Entergy relied. In addition, Dynegy argues that Entergy is erecting barriers to entry by delaying requests for interconnection. However, by its own admission, Dynegy provides no specific evidence supporting its claim. Accordingly, Dynegy's protest is denied.

3. Southern Companies (Docket No. ER97-4166-008 )

a. Southern Companies

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<sup>16</sup> Using RDI data, we updated the available supply in Entergy's control area market by adding over 3,700 MW of installed capacity available for sale in the Entergy control area market.

We have compared Southern Companies' generation capacity to the supply margin (difference between available supply and peak demand) in its control area market. Available supply includes all uncommitted generation that can reach the market once transmission constraints are factored in.

In analyzing the Southern Companies control area market, we updated Southern Companies' study to: (1) include new capacity additions in the market area;<sup>17</sup> and (2) incorporate peak load data from the applicant's 2000 Form No. 1. Uncommitted capacity from outside the Southern Companies' control area market was adjusted so that the values were no more than TTC amounts posted on Southern Companies' OASIS. Based on this information, the supply margin is approximately 8,000 MW. Southern Companies' installed capacity is over four times the supply margin.

Based on these results, Southern Companies has the ability to exercise market power within its control area market because its generation is needed to meet the market's peak demand. We will therefore impose mitigation (discussed below) for Southern Companies and its affiliates in this market. A similar analysis of the markets outside of Southern Companies' control area indicates that Southern Companies passes the SMA screen. As a result, the mitigation discussed below does not apply to the markets outside of Southern Companies' control area market.

b. Mirant

The study before us does not include sufficient detail to perform the SMA for Mirant on a stand-alone basis. Accordingly, Mirant is directed to revise its submittal consistent with the SMA screen described above and submit the revised analysis within 15 days of the date of this order.

E. Mitigation for Spot Market Energy Sales<sup>18</sup>

The primary tool for exercising generation market power is physical or economic withholding. To prevent physical withholding, we will require that an applicant who fails

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<sup>17</sup> Using RDI data, we updated the available supply in Southern Companies' control area market by adding over 7,600 MW of installed capacity, available for sale in the Southern Companies' control area market.

<sup>18</sup> Spot market energy sales are short-term sales agreements for delivery within the next calendar day.

the SMA screen offer uncommitted capacity (i.e., generation in excess of each hourly projected peak load and minimum required operating reserves) for spot market sales in the relevant market. To prevent economic withholding, this uncommitted capacity will be priced under a form of cost-based rates. We will require a split-the-savings formula, which was the traditional cost-based ratemaking model used for spot market energy sales.<sup>19</sup> This historical costing approach was a way of establishing an economic value for spot energy exchanges by dividing the trade benefits equally between the buyer and the seller. Eliminating an applicant's ability to negotiate trade benefits is an effective means of mitigating the applicant's market power in the spot market.<sup>20</sup>

Applying mitigation to spot market transactions will also result in mitigation of generation market power in longer term (forward) markets by creating a kind of competitive "standard offer" service for customers. If sellers attempt to charge excessive, non-competitive prices in forward markets, customers can avoid them by waiting to purchase in the real-time market. This puts market pressure on sellers to offer competitive prices in the forward markets. And when sellers offer competitive forward prices, many buyers will prefer to purchase in the forward markets in order to gain price certainty.

An applicant (and any affiliate that trades in the relevant market) must post on its company web site the following information on a daily basis for each control area. By noon for the following trading day, the applicant must post the projected twenty four hourly incremental (out-of-pocket) costs for energy offered for spot market sales in its control area or in control areas surrounded by the applicant's control area.<sup>21</sup> The incremental cost data will be based on the economic dispatch of uncommitted generation resources available after all prior commitments are prescheduled.<sup>22</sup>

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<sup>19</sup>A seller's incremental cost (the out-of-pocket cost of producing an additional MW ) is compared with a buyer's decremental cost (the cost of not producing the last MW). The average of the incremental and decremental costs is the split savings rate.

<sup>20</sup>Trade benefits as used herein refer to the portion of the calculated rate that is above the seller's incremental cost which equals the amount of savings realized by the buyer through the economy energy sale.

<sup>21</sup>To the extent an applicant's operations span multiple time zones, the noon requirement applies to the time zone in which its dispatch center is located.

<sup>22</sup>We will not mandate that a specific amount of generation (or the associated incremental cost data) be offered for spot sales. As demand for this service is established, (continued...)

All purchase requests (i.e., decremental energy bids) received by 6:00 p.m. for the following trading day will be processed in order beginning with the highest decremental price matched with the lowest incremental price for an hour. All requests received after this deadline up to the deadline for scheduling hourly transactions in the applicants' OATTs will be processed on a first come, first serve basis.

We will require that the applicants include the transaction information for all mitigated spot market sales in all subsequent quarterly reports. The reports should separately identify these transactions as split-the-savings sales and follow the existing format in all other respects.

We will not impose a cost-based rate for longer term transactions at this time. As indicated above, maintaining an accurately priced spot market is the single most important element for disciplining longer term transactions. The required posting of an applicant's incremental cost will provide the information necessary for entities to negotiate mutually acceptable rates, terms, and conditions for all longer term transactions. While we will not impose a ceiling or cost-based rate, we will require that the applicant offer and post on its company web site a portfolio of longer term products and prices available to entities within an applicant's control area.<sup>23</sup> If in the future a legitimate concern is raised that indicates an exercise of market power in the longer term products offered by the applicants, further mitigation may be necessary.

This mitigation for economic withholding will only be effective if applicants accurately post their incremental costs. In order to ensure that these costs are not inflated, we will impose a spot energy purchase mitigation. In addition to requiring the posting of hourly incremental cost data, we will also require an applicant to simultaneously post hourly decremental cost data for the following trading day. Applicants will be required to purchase only spot energy offered at a delivered price below the applicant's posted decremental price. All entities, both inside and outside the applicant's control area, may offer to supply this service.

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<sup>22</sup>(...continued)

applicants must respond by posting sufficient offers to meet the level of demand. To the extent demand for this service grows, it will be in the applicants' best interest to post sufficient ascending cost data to satisfy the need.

<sup>23</sup>We note that offering such products together with price information is a common practice established by many marketers.

There is a close relationship between an applicant's incremental cost (producing the next unit of energy) and its decremental cost (producing one less unit of energy). Because of this relationship, if the posted incremental cost is inflated, the posted decremental cost will also have to be inflated. Therefore, the purchase mitigation provides the economic incentive to discipline the accurate posting of incremental cost data. All supply bids received between the noon posting and 5:00 p.m. (one hour before the initial calculation of the split-the-savings sales) will be processed by matching the lowest incremental cost purchase offer with the applicant's highest decremental cost. In this manner, the originally posted incremental cost data will be adjusted down the supply curve to include the lower cost generation now displaced by cheaper economy energy purchases. All subsequent sales will be processed on a first come, first served basis.

\_\_\_\_F.     Mitigation for Size of Pivotal Supplier

Imposing cost-based rates mitigates an applicant's ability to raise generation prices, however it does nothing to mitigate the core problem, which is the relative size of an applicant. In an effort to increase supply in the applicant's core market and thereby reduce the applicant's relative size, we will require a modification to the current practice of evaluating generation interconnection applications for unaffiliated entities. When a transmission provider performs a study pursuant to a request for interconnection (e.g., feasibility, system impact or facility study), an unaffiliated entity, such as a merchant plant, may request that the output of its proposed project be modeled for study purposes to serve load within the control area that it is located without having to formally designate a particular load or without having to be selected as a designated network resource at the time of interconnection. These unaffiliated entities will be treated as if they are a competing network resource in meeting load and load growth.

In addition, we will require that applicants post on their web sites optimum areas on their systems for locating prospective generating facilities. For example, they should identify areas of expected load growth that will either require transmission expansion or alternatively the siting of new generation and areas on the system that can accommodate new generation without system upgrades.<sup>24</sup> This information should be updated on a quarterly basis. In addition to promoting the entry of new generation, posting this information will facilitate least cost integrated planning.

G.     Residual Transmission Market Power

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<sup>24</sup>Because this information involves possible future expansion, and not existing facilities, this requirement should not raise safety concerns.

Intervenors raise serious concerns about the integrity of the postings of ATC on Entergy's and Southern Companies' OASIS. MEAM and Lafayette state that Entergy has posted zero ATC several times in the last two years which drastically limits competing power suppliers. They note that while Entergy has an OATT, if there is no ATC available, the tariff is meaningless. Similarly, Enron notes that the OASIS ATC postings show erratic swings with favorable treatment to Entergy's marketing affiliate (Entergy Power Marketing Corp.). Enron raises similar discrimination concerns with respect to Southern and its affiliates due to the posting of inaccurate information on Southern's OASIS. According to Enron, Southern has made it impossible to verify its compliance with the OASIS standards and communication protocols because audit information is not posted. Intervenors request that the Commission set the issue of transmission market power for hearing.

In order to ensure that available competing supplies are deliverable, we will require that Entergy and Southern Companies employ an independent third party to operate and administer their OASIS sites. AEP is already in compliance with this requirement due to its meeting our recent merger condition.<sup>25</sup> AEP has entered into an agreement with SPP wherein SPP calculates and posts both short-term and long-term ATC and accepts or denies transmission service requests for customers seeking service over the AEP East zone.

The Commission orders:

(A) Within 15 days of the date of this order, AEP, Entergy, and Southern Companies must make a filing with the Commission demonstrating that they are in compliance with all aspects of the mitigation described herein.

(B) Mirant must submit a stand-alone SMA analysis within 15 days of the date of the date of this order, as discussed in the body of this order.

(C) AEP, Entergy, and Southern Companies are directed to include in their quarterly transaction reports the transaction information for all mitigated spot market sales and to separately identify these transactions as split-the-savings sales, as discussed in the body of this order.

By the Commission. Commissioner Breathitt dissented with a separate statement attached.

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<sup>25</sup>See American Electric Power Company and Central and South West Corporation, 91 FERC ¶ 61,208 at 61,747-48 (2000).

( S E A L )

David P. Boergers,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

AEP Power Marketing, Inc., AEP Service  
Corporation, CSW Power Marketing, Inc.  
CSW Energy Services, Inc., and Central  
and South West Services, Inc.

Docket Nos. ER96-2495-015,  
ER97-4143-003, ER97-1238-010,  
ER98-2075-009, and ER98-542-005  
(Not consolidated)

Breathitt, Commissioner, dissenting:



(Issued November 20, 2001)

The Commission is taking an important action in this order, and I am writing separately to explain why I cannot support it. I do not wish my dissent to signal a difference of opinion with respect to the fundamental policy objectives this order attempts to foster. Instead, my discomfort is with the way my colleagues have chosen to pursue those objectives.

As I view this order, its basic underlying objectives are twofold. First, the order seeks to find a substitute for the hub-and-spoke market power analysis that the Commission has traditionally used to evaluate applications for market-based rates. As I have publicly stated on several occasions, I share my colleagues' concern that the hub-and-spoke method may not adequately protect against the exercise of market power; and I believe the Commission must take action to undertake an inquiry into improving our analysis. However, I do not support the approach of applying the Commission's newly designed Supply Market Assessment (SMA) screen, and requiring the mitigation set forth in this order, as an "interim" measure until the Commission is able to complete a broader generic inquiry.

My primary concern with this interim mechanism is that the SMA, and the mitigation measures required of those utilities that fail the screen, have been cobbled together very quickly, without the benefit of industry comment. I cannot say with any confidence that the screen presents the best method of assessing market power, nor that we can predict what effect the various mitigation measures will have on wholesale competition and the development of energy markets. I believe one effect might be to cause utilities to "mothball" older "pivotal" units in order to pass the screen. The new analysis also could have the effect of slowing divestiture by rendering unattractive the purchase of "pivotal" generation. The mitigation measures in this order must be implemented within fifteen days - an extraordinarily short time to implement the order's many directives. Moreover, compliance is required even before the Commission will have the benefit of the parties' arguments on rehearing.

The Commission has already announced a broad-based inquiry into our market power analysis - a rulemaking that will be informed by outreach with experts and industry participants. That, I believe, is the appropriate path to take. I believe that by issuing a complex and controversial interim analysis and mitigation, we are diverting Commission and industry resources away from the important long-term solution. Instead, the process now will be bogged down with compliance, rehearing, and possible court review of the interim approach. I just don't see the need for all of this; the tail is wagging the dog, all to the detriment of a sensible replacement of the hub-and-spoke method. I would jettison

the interim analysis and get to work to develop a long-term solution as quickly as possible.

The second objective underlying this order is not so clearly stated. However, application of the SMA screen is clearly meant to encourage large vertically integrated utilities to join RTOs. I fully endorse the goal of fully functioning RTOs, and all of us have been working hard to move forward with RTO formation. Certainly there is no higher priority at the Commission at this time. However, as a policy matter, I disagree with using the threat of losing market-based rates as the "stick". If forming RTOs is the goal here, then we should be straightforward about that and establish a rulemaking to mandate them -- going through the front door, not the back door. The order ominously holds out the possibility of further "mitigation" should it become necessary in the future. What does that do for certainty and minimizing risk?

I fear that this order will have a chilling effect on competition and send the wrong message to generators - one that could thwart the Commission's important goal to encourage investment in generation facilities. I do not share in the order's confidence that there is a huge problem - either real or perceived - that requires such immediate surgery. For these reasons, I will be issuing a dissent on this order.

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Linda K. Breathitt  
Commissioner